

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

OUTMEMPHIS, et al.,

Plaintiffs,

v.

BILL LEE, et al.,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF TENNESSEE, et al.,

Defendants.

Civil Action No. 2:23-CV-2670

Civil Action No. 2:24-CV-2101

Chief Judge Lipman

Plaintiffs' Response to Defendants' Notice of Supplemental Authority

Plaintiffs write in response to Defendants' Notice of Supplemental Authority, ECF No. 110, calling the Court's attention to the Supreme Court's recent decision in *Food and Drug Admin. v. Alliance for Hippocratic Medicine*, No. 23-235, 602 U.S. ___, 2024 WL 2964140 (June 13, 2024). Contrary to Defendants' notice, nothing in the decision supports dismissal of OUTMemphis for lack of standing.

The plaintiffs in *Alliance for Hippocratic Medicine* based their theory of organizational standing on incurring costs *to oppose the FDA's actions*. Slip Op. at 22. The Supreme Court

rejected this approach, noting that “an organization that *has not suffered a concrete injury caused by a defendant’s action* cannot spend its way into standing simply by expending money to gather information and advocate against the defendant’s action.” *Id.* (emphasis added). If an organization could “manufacture its own standing” in this way, then “all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies.” *Id.*

The Supreme Court distinguished such manufactured standing from the legitimate frustration of mission allegations at issue in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), in which defendant’s actions “perceptibly impaired [the plaintiff’s] ability to provide counseling and referral services” to its clients. Slip Op. at 23.

Like the plaintiff in *Havens*, and unlike the plaintiff in *Alliance for Hippocratic Medicine*, OUTMemphis alleges that Defendants are “impos[ing] an impediment” to its counseling and support services. *Id.* Among other relevant allegations, Defendants’ enforcement of the Aggravated Prostitution law and related registry requirements directly impact Plaintiff’s ability to secure name changes for clients through its Trans Services program, connect its clients to housing and employment, bring people out to community events, and encourage voluntary HIV testing. *See* Amended Compl., ECF No. 62, ¶¶ 250, 254, 257, 260.

Finally, it is not the case, as Defendants’ wrongly state, that the Supreme Court “has now held that government action that ‘impair[s] the[] ability to provide services and achieve their organizational missions . . . does not work to demonstrate standing.’” ECF No. 110 at 2, quoting Slip Op. at 21. Rather, the Supreme Court held that *Alliance for Hippocratic Medicine*’s specific allegations—of spending money to oppose the FDA’s actions—did not demonstrate a direct impairment of the organization’s work. Compare Slip Op. at 21-22, with *id.* at 23 (reiterating that

standing is appropriate where defendant “perceptibly impaired [plaintiff’s] ability to provide counseling and referral services for low- and moderate-income homeseekers.”) *Alliance for Hippocratic Medicine* thus presents no support for Defendants’ motion to dismiss.

Dated: June 18, 2024

Respectfully submitted,

/s/ Rachel Meeropol

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Certificate of Service

I hereby certify that a true and exact copy of the foregoing was filed and served via the Court's electronic filing system on this the 18th day of June 2024, upon:

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